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No. 82-1559

In the Supreme Court of the United States

October Term, 1982

ROBERT J. KONDRAT,
Petitioner,

vs.

CITY OF WILLOUGHBY HILLS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where the City offers to the trial court evidence as to a taxpayer's liability, and the taxpayer offers nothing to the court to create an issue as to a material fact, is the trial court correct in granting the City's Motion for Summary Judgment?

2. Is the nonpayment of taxes admittedly owed to a municipality a proper method of objecting to the policies of the municipalities?

3. Is the Supremacy Clause of Article VI of the United States Constitution a proper citation of Supreme Court jurisdiction?

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OPINIONS BELOW

The Ohio Supreme Court in Case No. 82-1695 on March 2, 1983, *sua sponte* dismissed Petitioner's appeal for the reason that no substantial constitutional question existed.

On October 18, 1982, the Eleventh District Court of Appeals of Ohio, in Case No. 8-280, affirmed the Summary Judgment granted by the Willoughby Municipal Court on August 24, 1981 in Case No. 80-CVF-39989.

JURISDICTIONAL STATEMENT

Petitioner filed a petition for a Writ of Certiorari on March 21, 1983, pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

No constitutional issues were raised or argued in the courts below by Petitioner.

STATEMENT OF THE CASE

On August 21, 1980, Respondent, City of Willoughby Hills, filed a civil complaint in the Willoughby Municipal Court against Petitioner for the collection of municipal income taxes for the 1977, 1978 and 1979 calendar years.

After Petitioner filed his Answer, the City filed a Motion for Summary Judgment accompanied by the Affidavit of the Willoughby Hills Tax Administrator alleging the amount then due and owing the City. On December 1, 1980, the Willoughby Municipal Court granted Petitioner a leave to answer discovery and the City's Motion for Summary Judgment by December 23, 1980.

Petitioner filed a motion to have the judge of the Willoughby Municipal Court removed from considering the case. On February 11, 1981, the Municipal Court certified the case to the Lake County Common Pleas Administrative Judge and stayed the proceedings pending the outcome of the certification.

On February 26, the Lake County Common Pleas Administrative Judge declined to remove the Municipal Court Judge from considering the case and referred the case back to the Municipal Court Judge for appropriate action.

On March 2, 1981, the Municipal Court Judge voluntarily removed herself and appointed an Acting Judge to consider the proceedings.

On or about March 4, 1981, Petitioner appealed the February 26 decision of the Lake County Common Pleas Administrative Judge. The Acting Municipal Court Judge stayed the City's case pending the disposition of the Petitioner's appeal.

On March 16, 1981, the City filed a Motion to Dismiss Petitioner's Appeal claiming that the Administrative Judge's Order from which Petitioner appealed was not a final appealable Order. The Court of Appeals agreed and dismissed the Petitioner's Appeal on May 18, 1981.

On August 24, 1981, the Acting Judge of the Willoughby Municipal Court granted the City's Motion for Summary Judgment. Petitioner appealed to the Lake County Court of Appeals.

The Court of Appeals affirmed the decision of the Municipal Court holding that Petitioner had set forth no assignments of error in his Brief. The court further found that the trial court based its summary judgment on "uncontradicted information sufficient to determine [Petitioner's] municipal income tax liability." Appellate Opinion at 6.

Petitioner then appealed to the Ohio Supreme Court, where that court *sua sponte* dismissed the appeal for lack of a substantial constitutional question.

The City now files this Brief in Opposition to Petition for Writ of Certiorari.

ARGUMENT

1. THE TRIAL COURT WAS CORRECT AS A MATTER OF LAW IN GRANTING THE CITY'S MOTION FOR SUMMARY JUDGMENT AGAINST PETITIONER WHERE PETITIONER OFFERED NO FACTS TO CONTROVERT HIS LIABILITY AND NONPAYMENT OF TAXES.

This case arises out of an action by the City of Willoughby Hills to collect municipal income taxes which Petitioner refused to pay for the 1977, 1978 and 1979 calendar years. The sole issue raised by either party at the trial level was whether the Petitioner could refuse to pay those taxes. Petitioner claims that he cannot be compelled to pay taxes which "support a government whose officials are oppressive and who disregard the law."

An uncontroverted Affidavit from the Tax Administrator of the City was presented to the trial court which offered evidence that Petitioner owed, but had not paid, his municipal income taxes. The Affidavit was offered in support of Respondent's Motion for Summary Judgment under Ohio Civil Rule of Procedure 56 which, like its federal counterpart, allows the court to rule as a matter of law where no material fact is in dispute.

In the trial court, Petitioner offered nothing to put into dispute the fact that he had not paid the taxes which were owed. In fact, in his Petition for Writ of Certiorari, Petitioner admits that he owes the tax monies. (Petition, p. 7) Because there was no dispute that Petitioner owed, but had not paid, his municipal income taxes, the trial court was correct in granting the City's Motion for Summary Judgment, and the Lake County Court of Appeals was correct in affirming that decision.

2. PETITIONER MAY NOT REFUSE TO PAY HIS MUNICIPAL INCOME TAX AS A PROTEST AGAINST LOCAL GOVERNMENT.

The facts revealed to the lower courts showed that the only reason Petitioner failed to pay his municipal income tax was because he was dissatisfied with the local government.

It is well-settled that a taxpayer's objection to the government's manner of operation and to ways it spends money raised by income taxes does not present a basis for the individual taxpayer to assert invalidity of income tax laws or exonerate his personal liability thereunder. *Ward v. United States*, 344 F.2d 316 (10th Cir. 1965), *cert. denied*, 385 U.S. 1014. Furthermore, a taxpayer's disagreement with policies of government because they may not be in accord with dictates of the taxpayer's personal beliefs does not justify refusal to comply with the law or justify the nonpayment of income taxes. *Lull v. Commissioner*, 602 F.2d 1166 (4th Cir. 1979). See also: *Crowe v. Commissioner*, 396 F.2d 766 (8th Cir. 1968).

Therefore, Petitioner cannot refuse to pay his income taxes because he is dissatisfied with his local government. An uncontroverted affidavit at trial showed that he owes the tax. Petitioner has even admitted that he owes the tax. Thus, the lower courts were correct in determining that Petitioner should pay his taxes owed to the City, and this Court should deny Petitioner's Petition for Certiorari.

3. THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION DOES NOT PROVIDE JURISDICTION FOR THIS COURT.

Petitioner claims in his Jurisdictional Statement that this Court's jurisdiction for this case is found in Article VI of the United States Constitution—the Supremacy Clause. Petitioner's claim is erroneous.

The Supremacy Clause does not provide jurisdiction for this Court. It provides that no state law shall interfere with the laws of the United States.

Petitioner has not demonstrated to this Court, or to any court, how any law of Ohio or Willoughby Hills has interfered with any law of the United States. Nor has Petitioner shown how the Supremacy Clause relates to the taxes which he admittedly owes, but has not paid. Therefore, Petitioner's Petition for Certiorari should be denied.

CONCLUSION

Respondent respectfully requests that this Honorable Court deny jurisdiction. The trial court was provided with uncontroverted evidence showing that Petitioner owed taxes which he had refused to pay, and correctly granted the City's Motion for Summary Judgment based thereon. Because Petitioner cannot refuse to pay his income taxes simply because he is dissatisfied with the local government, the lower courts were correct in rendering an affirming judgment against him.

Respectfully submitted,

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